IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 598 of 2003.

Reserved on: 24.4.2007.

Decided on: 18.05 2007.

BCC Fuba India Limited.

… … … Petitioner.

Versus

H.P. Labour Court-cum-Industrial Tribunal and another.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the petitioner:	**Mr. Rajnish Maniktala, Advocate.**
For Respondent No.2:	**Mr. R.K. Gautam, Sr. Advocate with Mr. Naveen Bhardwaj, Advocate.**

Rajiv Sharma, Judge:

By way of this petition, award passed by the Labour Court, Shimla, dated 7.4.2003 in reference No.36 of 1998 has been assailed.

In sequel to the reference made by the State Government to the Labour Court, the workman had filed claim petition before

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Whether reporters of local papers may be allowed to see the judgment? Yes.

the H.P. Labour Court-cum-Industrial Tribunal, Shimla. The Management has filed reply to the claim petition field by the workman.

The brief facts necessary for adjudication of this petition are that respondent No.2 (hereinafter referred to as the workman for convenience sake) was appointed on 21st March, 1995 on a consolidated amount of Rs.800/- per month. He had completed the training period in September, 1995. He was suspended from service vide letter dated 27.1.1996 and was served with a charge-sheet on 30th January, 1996. He had filed reply to the charge-sheet levelled against him. He was served with additional charge-sheet on 11th February, 1996. In sequel to the enquiry report, the services of the petitioner were terminated on 20.5.1996. He gave a demand notice to the Labour-cum-Conciliation Officer. After the failure report by the Labour-cum-Conciliation Officer, the reference bearing No.36 of 1998 was made by the State Government to the H.P. Labour Court, Shimla.

Mr. Rajnish Maniktala appearing on behalf of the Management has strenuously argued that the award dated 7.4.2003 is not sustainable in the eyes of law. Mr. Jeet Ram Poswal appearing on behalf of respondent No.2, i.e. workman has supported the award dated 7.4.2003.

I have heard the parties and perused the record.

It was an admitted case before the Labour Court that the workman was not supplied with a copy of the enquiry report Ext. R-H, dated 14.5.1996 and the same was supplied to him by

the Enquiry Officer vide letter dated 20.5.1996. The sole ground taken before the Labour Court by the workman was that he was not supplied the copy of enquiry report before removal from service. The Labour Court has relied upon the following authorities dealing with the effect of non-supply of enquiry report to the workman before the imposition of penalty of removal:-

1. **MANAGEMENT, SHAHDARA (DELHI) SAHARANPUR LIGHT RAILWAY CO. LTD. V. S.S. RAILWAY WORKERS UNION. AIR 1969 SUPREME COURT 513.**
2. **MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS VS. B.KARUNAKAR AND OTHERS. (1993) 4 SUPREME COURT CASES 727.**
3. **S.K. SINGH VS. CENTRAL BANK OF INDIA AND OTHERS (1996) 6 SUPREME COURT CASES 415.**
4. **STATE OF U.P. VS. HARENDRA ARORA AND ANOTHER (2001) 6 SUPREME COURT CASES 392.**

The Labour Court after discussing the judgment of the Hon'ble Supreme Court reported in **1993(4) SCC 727** came to the conclusion that the workman was entitled to the copy of the enquiry report before the imposition of the penalty of removal from service. While considering this aspect, the learned Labour Court has also considered the statement of RW-1 Shri Lal Chand. The Labour Court has opined that non-supply of the copy of enquiry report has prejudiced the workman. It is settled law that the copy of enquiry report is required to be supplied to the workman to enable him to point out any discrepancy/shortcomings etc. in the enquiry report. The disciplinary authority while imposing the penalty has to take into

consideration the representation/reply filed by the workman with regard to the enquiry report. It is only thereafter the penalty, if any, can be imposed upon the workman.

In the present case, admittedly, the workman has been supplied with the copy of enquiry report after he was removed from service. In these circumstances, the Labour Court has directed the reinstatement of the workman and has given the liberty to the Management to proceed further with the enquiry against the workman from the stage of furnishing with copy of enquiry report, Ext. R-H, dated 14.5.1996 by placing him under suspension. The Labour Court has further directed that the period intervening the removal of the workman from service (20.5.1996) to the date of his reinstatement pursuant to the award he shall be deemed to be under suspension and was held entitled for subsistence allowance. There is neither any jurisdictional error nor any procedural irregularity in the award dated 7th April, 2003.

The Hon'ble Supreme Court in **Calcutta Port Shramik Union v. The Calcutta River Transport Association and others AIR 1988 Supreme Court 2168** has held that the interference in the awards passed by the Industrial Tribunals by the High Courts should not be on hyper-technical grounds. Their Lordships have opined as under:-

> **"The object of enacting the Industrial Disputes Act 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a Government to an industrial tribunal it has to be presumed**

> **ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hyper-technical grounds. Unfortunately the orders of the single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis."**

It is settled proposition of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the Labour Court. The Hon'ble Supreme Court has also held in **Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and Another (2000) 4 SCC 245** that exercising the powers under Articles 226 and 227 of the Constitution, the interference with pure findings of facts and re-appreciation of the evidence is held to be impermissible. It was also held that even insufficiency of evidence or if another view is possible there is no ground to interfere with the findings of the Industrial Tribunal. Their Lordships have opined as under:-

> **"The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his won on pure questions of**

> **fact, unmindful, though award fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."**

The Hon'ble Supreme Court has again considered this aspect in **Sugarbai M. Siddiq and Others versus Ramesh S. Hankare (dead) by LRs. (2001) 8 SCC 477** and has held that scope of powers of High Court is concerned not with the decision of the lower court/Tribunal, but with its decision making process. High Court must ascertain whether such Court or Tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, and then only High Court can interfere with otherwise not. Their Lordships have held as under:-

> **"There can be little doubt that in an application under Article 227 of the Constitution, the High Court has to see whether the lower Court/tribunal has jurisdiction to deal with the mater and if so, whether the impugned order is vitiated by procedural irregularity; in other**

words, the Court is concerned not with the decision but with the decision-making process. On this ground alone the order of the High Court is liable to be set aside."

Accordingly, the award dated 7.4.2003 is up-held and this petition is dismissed with costs quantified at Rs.5,000/-. The interim orders passed by this Court are vacated.

(Rajiv Sharma)
Judge

May 18, 2007
(sck).